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Project Paperclip

4 Dir Civ Aff, USCCR 1D 14 June 1947

1. The Legal Division assumes that Project Paperclip is not prohibited by any Allied Agreement or by Control Council law. Control Council enactments are binding only in occupied Germany. Therefore, Control Council Law No. 25, which prohibits scientific research for military purposes, does not prohibit the employment of German scientists, outside of Germany, in research connected with weapons of war. Moreover, while the excerpts from Control Council Proclamation No. 2, quoted in a second indorsement hereto, do not expressly authorize Project Paperclip, these provisions, particularly Section III, paragraph 4b, sanction the voluntary employment of German scientists and other technical experts by the Allied Governments. If a German scientist willingly contracts to work for an Allied Government outside Germany, such action is not prohibited even though the work involves research on weapons of war.

2. We come now to the question of whether German scientists may be required to leave Germany, against their will, and perform work in scientific research on weapons of war for one of the Allied Powers. As stated in Item 3 to this Carrier Sheet, paragraph 19(a), section VI, of Control Council Proclamation No. 2 has heretofore been cited by one of the occupying powers as authority for the forcible removal of German labor and technical experts for employment outside of Germany. This provision is as follows:

> "19(a). The German authorities will carry out, for the benefit of the United Nations, such measures of restitution, reinstatement, restoration, reparation, reconstruction, relief and rehabilitation as the Allied Representatives may prescribe. For these purposes the German authorities will effect or procure the surrender or transfer of such property, assets, rights, titles and interests, effect such deliveries and carry out such repair, building and construction work, whether in Germany or elsewhere, and will provide such transport, plant, equipment and materials of all kinds, labour, personnel and specialist and other services, for use in Germany or elsewhere, as the Allied Representatives may direct."

We do not believe this authority was intended by the Control Council to be exercised unilaterally by one of the Zone Commanders. It is our opinion that it was the intention of the Control Council that it, as a body, would agree regarding the implementation of the provisions of paragraph 19(a), section VI, of Control Council Proclamation No. 2. The matters specified in this paragraph, i.e., reparations, restitutions, etc., have always been treated as matters which affect Germany as a whole and upon which there should be quadripartite agreement. Paragraph 2 of the Statement by the Governments of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic on Control Machinery in Germany provides as follows:

> "The Control Council, whose decisions shall be unanimous, will ensure appropriate uniformity of action by the Commanders-in-Chief in their respective zones of occupation and will reach agreed decisions on the chief questions affecting Germany as a whole." (Underscoring supplied.)

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that all of the problems enumerated in paragraph 19(a), section VI of Control Council Proclamation No. 2 are among the "chief questions affecting Germany as a whole" cannot be questioned.

3. The labor and personnel which is to be furnished by the German authorities under paragraph 19(a), moreover, relates only to labor necessary for the carrying out of Control Council agreements relating to restitution, reinstatement, restoration, reparation, reconstruction, relief or rehabilitation. For example, where certain factories or plants have been allocated by quadripartite agreement to one of the occupying powers for reparations, it may be that, under paragraph 19(a) the German authorities could properly be required by one of the occupying powers to furnish the necessary labor to dismantle the factory, prepare it for shipment, transport it to destination, and reassemble it at the new location. This may involve the use of technical experts to advise regarding the proper dismantling, reassembling, and use of the equipment which is a part of the factory. For the purpose of reconstruction, repairing, and reassembling the equipment, it is very likely that some German labor and technical experts will be required to leave Germany temporarily. Paragraph 19(a), however, does not authorize the retention of such German nationals in labor camps of the occupying power or the forcible employment of the technical experts on matters which do not relate to the reassembling and reconstruction of the factory transferred as reparations. Certainly, paragraph 19(a) grants no authority for the taking of German scientists, against their will, into any of the occupying powers for research work on weapons of war.

4. The general right to requisition services of the inhabitants of an occupied territory for non-military employment is a recognized rule of international law. In view of principles and aims of the Allied Governments set forth in various Allied Agreements, it is evident that the Control Council did not intend, by the provisions of paragraph 19(a), section VI, of Control Council Proclamation No. 2, to countenance deportation, by one of the occupying powers, of German nationals for forced labor outside Germany. One of the announced aims of the Allied Governments was to prevent the forcible deportation of nationals of an occupied country for labor in the country of the occupant. Article II, paragraph 1(b) of Control Council Law No. 10, "Punishment of Persons Guilty of War Crimes, Crimes Against Humanity", lists ". . . deportation to slave labor or for any other purpose, of civilian population from occupied territory . . ." as a war crime. While Control Council Law No. 10 is applicable only within occupied Germany, it gives evidence of the intention of the Allies to outlaw, as a violation of the customs of war, deportation for forced labor of any kind.

5. Article III of the Report on the Tripartite Conference of Berlin states in part as follows:

> "It is not the intention of the Allies to destroy or enslave the German people. It is the intention of the Allies that the German people be given the opportunity to prepare for the eventual reconstruction of their life on a democratic and peaceful basis. If their own efforts are steadily directed to this end, it will be possible for them in due course to take their place among the free and peaceful peoples of the world."

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We believe this statement evidences the intention of the signatories to the Agreement that the inhumane practice of forcibly taking inhabitants of an occupied country from their homes and families and sending them for labor to another country, will not be practiced in Germany by the Occupying Powers. If a German national agrees to go to one of the Allied countries to work, there is no violation of the principle prohibiting forced labor. If a German national is temporarily required to leave Germany in connection with such work as the reassembling of a factory taken as reparations, this does not constitute forced labor. Where a German national, however, is taken out of Germany, not in connection with such work and not in accordance with a voluntary contract entered into by him and an Allied Government, he must be considered a forced laborer. Such seizure of labor is in direct violation of the provisions of the Berlin Protocol set forth above.

Berlin 42184

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